

P. Renée Wicklund (SBN 200588)  
**RICHMAN LAW & POLICY**  
 535 Mission St.  
 San Francisco, CA 94105  
 Tel: 917-327-3554  
 Email: rwicklund@richmanlawpolicy.com

John W. Howard (SBN 80200)  
 Michelle D. Volk (SBN 217151)  
 Scott James Street (SBN 258962)  
**JW HOWARD/ATTORNEYS, LTD.**  
 600 West Broadway, Ste. 1400  
 San Diego, CA 92101  
 Tel: 619-234-2842  
 Email: Johnh@jwhowardattorneys.com  
 michelle@jwhowardattorneys.com  
 sstreet@jwhowardattorneys.com

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

MERCOLA.COM, LLC and Dr. JOSEPH  
 MERCOLA,

Plaintiffs,

vs.

GOOGLE LLC, YOUTUBE, LLC,  
 ALPHABET INC., and DOES 1-10,

Defendants.

Case No.: 3:22-cv-05567-LB

**PLAINTIFFS' REQUEST  
 FOR LEAVE TO FILE  
 A SUR-REPLY**

Hearing Date: May 18, 2023

Courtroom: Courtroom B

Time: 9:30 a.m.

Judge: Hon. Laurel Beeler

Mercola.com, LLC and Dr. Joseph Mercola (collectively, "Plaintiffs"), hereby respectfully request the Court's permission to file a Sur-Reply in the above-referenced matter. In support of this Motion, Plaintiffs state the following:

REQUEST FOR LEAVE TO FILE A SUR-REPLY

1. On September 28, 2022, Plaintiffs filed their Complaint. (ECF No. 1.)
2. On December 16, 2022, Plaintiffs an Amended Complaint. (ECF No. 21.)
3. On February 10, 2023, Alphabet, Inc., Google, LLC, YouTube, LLC (collectively, “Defendants”) filed a Motion to Dismiss Plaintiffs’ Amended Complaint. (ECF No. 25.)
4. On March 10, 2023, Plaintiffs filed their Opposition to Defendants’ Motion to Dismiss. (ECF No. 28.)
5. On April 10, 2023, Defendants filed a Reply to Plaintiffs’ Opposition. (ECF No. 29)
6. Defendants’ Reply argued that “[t]here may be good reasons why Mercola did not plead that [they have] no replacement copies [of their video content]” and then cited the following link: <https://www.bitchute.com/channel/ySITC1RcRsOS/>. (*Id.* at 8 n.2.)
7. The link in *supra* ¶ 6 was not included in Plaintiffs’ pleadings, and thus is extrinsic evidence outside of the pleadings. “A district court generally may not consider materials outside the pleadings in deciding a motion under...Rule 12(b)(6).” *Durham v. Sachs Elec. Co.*, No. 18-cv-04506-BLF, 2020 U.S. Dist. LEXIS 242080, at \*4 (N.D. Cal. Dec. 23, 2020) (Labson Freeman, J.).
8. Defendants also imply that the link in *supra* ¶ 6 contains “replacement copies” of the content at issue in the Complaint. (ECF No. 29 at 8 n.2.) While this argument is a red herring, nevertheless, Defendants’ assertion is false as the link **does not** contain the 18 years of content at issue in the Complaint, but only a small fraction of the video content that once appeared on Plaintiffs’ YouTube channel. (*See* Declaration of Steven A. Rye, attached as **Exhibit A.**)

1 9. A Sur-Reply is necessary for Plaintiffs to respond to this new evidence introduced in  
2 Defendants' Reply. *See* L. R. 7-3(d)(1) ("If new evidence has been submitted in the  
3 reply, the opposing party may file and serve an Objection to Reply Evidence....")

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5 10. The proposed Sur-Reply does not unduly prejudice Defendants or cause any undue  
6 delay in the proceedings.

7 Based on the foregoing, Plaintiffs respectfully request that the Court grant their Motion  
8 for Leave to File a Sur-Reply.

9 Dated: April 14, 2022

Respectfully submitted,

11 **RICHMAN LAW & POLICY**

12 */s/ P. Renée Wicklund*

13 By:

P. Renée Wicklund

14 **JW HOWARD/ ATTORNEYS, LTD.**

15 JOHN W. HOWARD

16 MICHELLE V. VOLK

SCOTT JAMES STREET

17 *Attorneys for Plaintiffs*

18  
19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on April 14, 2023, I electronically filed the above document with the  
21 Clerk of the Court using CM/ECF which will send electronic notification of such filing to all  
22 registered counsel.

23  
24 Dated: April 14, 2023

By: */s/ P. Renée Wicklund*

P. Renée Wicklund

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28 REQUEST FOR LEAVE TO FILE A SUR-REPLY